

## **§ 964.5**

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

### **§ 964.5 Election as to hearing.**

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

### **§ 964.6 Default.**

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition and refer the matter to the Judicial Officer for issuance of the order provided for under § 964.19. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

### **§ 964.7 Presiding officers.**

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

## **39 CFR Ch. I (7–1–03 Edition)**

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 964.9 of this part.

### **§ 964.8 Subpoenas and witness fees not authorized.**

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

### **§ 964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.**

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in § 964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at